

**Memorandum of Decision: 01-20191506
Individual Income Tax
For the Tax Year 2014**

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Memorandum of Decision.

HOLDING

Individuals are permitted to carry-back their enterprise zone employment expense credit up to three years, even if the credit is claimed on an amended return.

ISSUE

I. Administration - Tax Credits.

Authority: IC § 6-3-3-10; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); Income Tax Information Bulletin 66 (August 2014).

Taxpayers seek to modify their 2014 income tax return to include an enterprise zone employment expense credit carried back from 2017.

STATEMENT OF FACTS

Taxpayers are individuals who timely filed income tax returns in Indiana for the tax years 2014 through 2017. In 2019, Taxpayers filed amended returns for each of these tax years, claiming the enterprise zone employment expense credit in 2017 and carrying the credit back 3 years. The Indiana Department of Revenue ("Department") accepted the amended returns and granted refunds for all but the 2014 tax year. The Department's letter rejecting the 2014 amended returns states that there is no carryback provision for the enterprise zone employment expense credit. The Taxpayers protest this rejection and an administrative hearing was held. This Memorandum of Decision results. Further facts will be supplied as required.

I. Administration - Tax Credits.

DISCUSSION

Taxpayers believe their 2014 amended return should be accepted because the enterprise zone employment expense credit is allowed to be carried back 3 years.

As an initial point, the Department notes that, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing . . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the initial refund determination, shall be entitled to deference.

IC § 6-3-3-10 establishes the tax credit for enterprise zone employment expenses. Subsection (c) of this statute provides, in part:

The amount of the credit provided by this section that a taxpayer uses during a particular taxable year may not exceed the taxpayer's qualified state tax liability for the taxable year. If the credit provided by this section exceeds the amount of that tax liability for the taxable year it is first claimed, then the excess may be carried back to preceding taxable years or carried over to succeeding taxable years and used as a credit against the taxpayer's qualified state tax liability for those taxable years [T]he credit provided by this section may be carried forward and applied in the ten (10) taxable years that succeed the taxable year in which the credit accrues. *The credit provided by this section may be carried back and applied in the three (3) taxable years that precede the taxable year in which the credit accrues.*

Income Tax Information Bulletin 66 (August 2014), 20140924 Ind. Reg. 045140374NRA, provides similar language regarding carrying back the tax credit:

II. EMPLOYMENT EXPENSE CREDIT ([IC 6-3-3-10](#))

An income tax credit is available for employers that hire qualified employees. A qualified employee is one who lives in the enterprise zone; works 50[percent] of his time in the enterprise zone; and performs services for the taxpayer, 90[percent] of which are directly related to the conduct of the taxpayer's trade or business that is located in the enterprise zone.

The credit is the lesser of 10[percent] multiplied by the qualified increased employment expenditures of the taxpayer for the taxable year or \$1,500 multiplied by the number of qualified employees employed by the taxpayer during the taxable year.

The tax credit can be carried forward for 10 years or carried back for 3 years. Pass-through entities' partners or shareholders are eligible for the credit in the same proportion as the distributive income to which the shareholder or partner is entitled.

(Emphasis added.)

Therefore, as provided by IC § 6-3-3-10 and Information Bulletin 66, the Employment Expense Credit for enterprise zones can be carried back 3 years. This means that the remaining credit not claimed on the 2017 amended return can be carried back as far as 2014. Because the 2017 amended return was accepted by the Department, including the Employment Expense Credit, the concurrently-filed 2014 amended return should be accepted as well, for the narrow purpose of carrying back and applying any remaining credit.

FINDING

Taxpayers' protest is granted subject to audit verification of the proper application of the credit.

April 14, 2020

Posted: 07/01/2020 by Legislative Services Agency
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